IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIRST DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 22027 of 2004

Between:

K.Venkataramana, R/o.Flat No.105, 1st Floor
Vijaya Raghava Apartments
Chandanagar, Hyderabad.50.

..... PETITIONER

AND

M/s Aluminum Industries Ltd (Machinery Division)
Serilingamapally (Post)
Hyderabad -5000019 Ranga Reddy District.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue writ, order or direction particularly one in the nature of writ of mandamus declaring the action of the respondent under the guise of disciplinary action and under the ruse of charge sheet keeping the petitioner out side the employment without adopting the due process of law for 24 months and without any payment of wages as per law and certified standing orders is illegal, arbitrary and violates Art.14, 16,19 and 21 of the Constitution of India and liable to be set aside and consequently reinstate the employee with all consequential benefits.

Counsel for the Petitioner: MS.G.SUDHA (None appeared)

Counsel for the Respondent: MR.V.SRINIVAS

The Court at the admission stage made the following :

ORDER:

None appears for the writ petitioner.

Heard the learned counsel for the respondent.

This writ petition is filed seeking a Writ of Mandamus declaring the action of the respondent-company for keeping the petitioner outside the employment without adopting the due process of law for 24 months and without any payment of wages as per law and certified standing orders under the guise of disciplinary action and under the ruse of charge sheet, as arbitrary and illegal.

The respondent-Company by proceedings dated 03.12.2002 issued suspension-cum-charge sheet alleging that the petitioner was distributing pamphlets on 02.12.2002. The petitioner contends that even after submission of the representation, no Enquiry Officer was appointed and that the respondent-Company is not paying suspension allowance/wages to him. Hence this writ petition.

In the counter affidavit filed on behalf of the respondent, it is stated that the respondent-Company is purely a Commercial Organization incorporated under the Companies Act by a Private Management having no nexus with the State Government. It is further stated that it is not a State within the meaning of Article 12 of the Constitution of India. It is also stated that the writ petition is not maintainable against a private body unless the element of public law is involved. It is stated that in the present case there is no violation of any statutory provisions and that the respondent-Company is not discharging any public duty and no element of public law is involved in not paying subsistence allowance to a suspended workman. It is further stated that due to the severe financial sickness, the respondent-Company fell in arrears to various parties like Sales Tax, Property Tax, NALA, P.F., E.S.I., Banks and the salaries are not paid to the workmen since 2000 onwards and the amounts provided in the

Balance Sheet will be paid after the Unit is revived by the B.I.F.R. Hence, the respondent-company prays to dismiss the writ petition.

It is stated by the respondent-Company that even though it has become sick, the salaries will be paid to the workmen after the Unit is revived by the B.I.F.R. Whether the petitioner is entitled to salaries or not has to be decided by the appropriate Forum. Since a specific plea has been taken by the respondent-Company that it is purely a Commercial Organization and it is not a State within the meaning of Article 12 of the Constitution of India, following the judgment rendered in **"PRADEED KUMAR BISWAS v. *INDIAN INSTITUTE OF CHEMICAL BIOLOGY*"** and in **"*FEDERAL BANK LIMITED v. SAGAR THOMAS*"**, the writ petition is dismissed as not maintainable against private body, because, no element of public law is involved.

Accordingly, the writ petition is dismissed. No costs.

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21-02-2005

vs/usd

To

1) M/s Aluminum Industries Ltd (Machinery Division)
Serilingamapally (Post)
Hyderabad -5000019 Ranga Reddy District.

2) 2 CD copies

THE HON'BLE MR JUSTICE K.C. BHANU

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Dated: 21-02-2005

vs